

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW
550 HIGHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN F. MUSTIAN
ELIZABETH ZECK
ELIZABETH ANN LOADHOLT FELDER
ANDREW J. MACLEOD
CHAD N. JOHNSTON
JOHN W. ROBERTS

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 252-8062

ALSO ADMITTED IN TX

April 16, 2012

VIA U.S. MAIL AND EMAIL

Matci Andino
Executive Director South Carolina Election Commission
Post Office Box 5987
Columbia, SC 29250
mandino@elections.sc.gov

Dick Harpootlian
South Carolina Democratic Party Chairman
Post Office Box 1090
Columbia, SC 29202
dharpootlian@scdp.org

Chad Connelly
South Carolina Republican Party Chairman
Post Office Box 12373
Columbia, SC 29201
Chad@scgop.com

RE: 2012 Party Primary Ballot

Dear Madam and Sirs:

Please accept this request on behalf of our client, Michael Anderson of Lexington, South Carolina, to refuse or, if necessary, remove the following purported candidates from the 2012 Party Primary ballot:

Gregory "Clay" Burkett (Republican), Lexington County Coroner
Jimmy D. McMillan (Republican), State House of Representatives, District 36
Walid Hakim (Democrat), State House of Representatives, District 88
Larry Carter Center (Democrat), State House of Representatives, District 114
Katrina Shealy (Republican), State Senate District 23

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These purported candidates failed to timely file a Statement of Economic Interests at the same time and with the same official with whom the candidate was required to file their declaration of candidacy pursuant to S.C. Code Ann. § 8-13-1356. Consequently, Mr. Anderson asserts that these persons have not validly declared themselves to be candidates in accordance with the provisions of S.C. Code Ann. § 7-11-15 and are unqualified to appear on the ballot in the upcoming South Carolina Primary Elections.

The South Carolina requirements for filing as a candidate are clear. "In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary . . . must file a statement of intention of candidacy between noon on March sixteenth and noon on March thirtieth," S.C. Code Ann. § 7-11-15. Although certain persons are exempt from the requirement to file statements of economic interests at the same time as their statement of intention of candidacy, *see* S.C. Code Ann. § 8-13-1356(A), (D), and (F),¹ candidates seeking nomination for the State Senate or House of Representatives and for a countywide office are required to file their statements of intention of candidacy with the county executive committee of their respective party. S.C. Code Ann. § 7-11-15(2) and (3). Concurrently, all candidates "must file a statement of economic interests for the preceding calendar year at the same time . . . the candidate files a declaration of candidacy." S.C. Code Ann. § 8-13-1356(B) (emphasis supplied).² Moreover, "an officer authorized to receive declarations of candidacy . . . may not accept a declaration of candidacy . . . unless the declaration . . . is accompanied by a statement of economic interests." S.C. Code § 8-13-1356(E) (emphasis added).

In addition to the clear statutory mandate, the State Election Commission, as well as the State Senate and House Ethics Committees, have made the requirement of contemporaneous filing of the statement of economic interests clear to the political parties, candidates, and the general public. *See* State Election Commission website (http://www.scvotes.org/candidate_information/nomination_by_political_party; "Candidates must also file a Statement of Economic Interest (SEI) form with the State Ethics Commission. This must be done electronically on the State Ethics Commission website. A copy of the SEI receipt, or other proof of filing, is required to be submitted with your SIC form at the time of filing."); State Senate Ethics Committee website (<http://www.scstatehouse.gov/CommitteeInfo/SenateEthics.php>); State House of Representatives Ethics Committee website (<http://www.sostatehouse.gov/committeeinfo/houseethics.php>).

¹ Individuals who have current disclosure statements on file, who are seeking to become candidates other than by filing (e.g., petition candidates), or who file for office before January 1 of the year in which the election is held are subject to different requirements for filing a statement of economic interests.

² Individuals seeking to become candidates must file their statement of economic interests form electronically for public disclosure on the website of the South Carolina Ethics Commission. *See* S.C. Code Ann. §§ 8-13-365 ("These disclosures and reports must be filed using an Internet-based filing system as prescribed by the commission."); <http://ethics.sc.gov/StatementofEconomicInterests/Pages/index.aspx> ("Where are the forms submitted? All Statement of Economic Interests Forms must be filed electronically . . . Upon filing, the information is immediately available to the public through public reporting, also accessed in Quick Links.").

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There can be no dispute these persons intended to offer themselves as candidates in the upcoming South Carolina Primary Election. Upon information and belief, each of these candidates were explicitly informed of the statutory mandate of filing a statement of economic interests at the same time by the County Party officials accepting the statements of intention of candidacy. In addition, upon information and belief, the place for filing statements of intention of candidacy for the Party Primary had available a computer terminal for the express purpose of filing statements of economic interests by candidates attempting to file statements of intention of candidacy. Even so, publicly available documents reflect that none of these purported candidates filed a statement of economic interests for 2011, concurrent with their statement of intention of candidacy for their respective offices:

- Mr. Burkett attempted to file for Lexington County Coroner with the Lexington County Republican Party on March 26, 2012. *See* Gregory C. Burkett campaign disclosure report dated April 10, 2012 ("03/26/2012 Lexington GOP PO Box 1346 Lexington, SC 29071 Filing fee \$3,362.60"); Lexington County Republican Party website (<http://www.lexingtongop.com/lcrp-info/candidatefiling2012/thurmarch262012filings>). However, Mr. Burkett failed to file a statement of economic interests until April 6, 2012. *See* Gregory C. Burkett Statement of Economic Interests Report dated April 6, 2012 (available online at <http://apps.sc.gov/PublicReporting/Index.aspx>).
- Mr. McMillan attempted to file for House District 36 with the Spartanburg County Republican Party. He appears not to have filed a campaign disclosure report. However, Mr. McMillan failed to file a statement of economic interests until April 16, 2012. *See* Jimmy D. McMillan Statement of Economic Interests Report dated April 16, 2012 (available online at <http://apps.sc.gov/PublicReporting/Index.aspx>).
- Mr. Hakim attempted to file for House District 88 with the Lexington County Democratic Party on March 29, 2012, (<https://docs.google.com/spreadsheet/ccc?key=0Aq6bWAPKZ0LGdG95QWIZYVJfODJKd3VITElmbXBXMGo#gid=1>). However, the State Ethics Commission website does not reflect that Mr. Hakim has filed a statement of economic interests. *See* State Ethics Commission filings for Walid N. Hakim (available online at <http://apps.sc.gov/PublicReporting/Index.aspx>).
- Mr. Carter Center attempted to file for House District 114 with the Charleston County Democratic Party on March 16, 2012, (<https://docs.google.com/spreadsheet/ccc?key=0Aq6bWAPKZ0LGdG95QWIZYVJfODJKd3VITElmbXBXMGo#gid=1>). However, the State Ethics Commission website does not reflect that Mr. Hakim has filed a statement of economic interests. *See* State Ethics Commission filings for Larry H. Carter Center (available online at <http://apps.sc.gov/PublicReporting/Index.aspx>).

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- Ms. Shealy attempted to file for Senate District 23 with the Lexington County Republican Party on March 16, 2012. See Katrina F. Shealy campaign disclosure report dated April 10, 2012 ("03/16/2012 Lexington GOP PO Box 1346 Lexington, SC 29071 Filing Fee \$416.00"); Lexington County Republican Party website (<http://www.lexingtongop.com/lcrp-info/candidatefiling2012/fridaymarch162012filings>); However, Ms. Shealy failed to file a statement of economic interests until April 12, 2012. See Katrina F. Shealy Statement of Economic Interests Report dated April 12, 2012 (available online at <http://apps.sc.gov/PublicReporting/Index.aspx>).

Although three of the purported candidates filed statements of economic interests after the closing of the filing period, none filed "at the same time" as they filed their statement of intentions of candidacy. The statutory requirements for validly filing a statement of intention of candidacy by these candidates required a contemporaneous, electronic filing of a statement of economic interests. Because the statute gives no room for discretion or extension after the end of filing, the parties should not certify the candidacy of these individuals and the State Election Commission should not approve or permit the printing of ballots with these purported candidates' names to appear on the ballot where it knows the mandatory filing requirements were not met. Furthermore, each of the candidates is seeking election through the party primary system and filed after January 1, 2012, and none had a current disclosure statement on file at the time they filed their statement of intention of candidacy.

Consequently, none of the candidates is eligible for the filing exemptions contemplated by section 8-13-1356 and there can be no justification for these purported candidates' refusal to file statements of economic interests at the same time as filing their statements of intention of candidacy. Mr. Anderson, therefore, requests that the State Election Commission and the State Parties not certify these individuals as candidates for the upcoming 2012 South Carolina Party Primary elections. See S.C. Code Ann. § 8-13-1356 (E) ("If the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy ... for nomination must not certify the candidate subsequent to the election.") (emphasis supplied).

Thank you for your assistance with this matter and please do not hesitate to contact me if you have any questions or if I can be of any further assistance.

Sincerely,

WELLOUGHBY & HOEFER, P.A.

Tracey C. Green